

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TAMARA MARIE CORTER, a married
individual,

Plaintiff,

v.

DOUGLAS COUNTY, a political
subdivision of the State of
Washington, and STEVE GROSECLOSE,
individually and as an agent of
Douglas County,

Defendant.

CASE NO. CV-12-173-EFS

**ORDER GRANTING DOUGLAS COUNTY'S
MOTION FOR SUMMARY JUDGMENT**

Before the Court, without oral argument, is Defendant Douglas County's Motion for Summary Judgment. ECF No. 17. Douglas County ("County") asks the Court to grant summary judgment on Plaintiff Tamara Corter's 42 U.S.C. § 1983 claims against it because there is insufficient evidence that the County ratified any wrongful conduct by Defendant Steve Groseclose or failed to train its employees. Ms. Corter opposes the motion. ECF No. 20. After reviewing the record and relevant authority, the Court is fully informed. As set forth below, the Court grants the County's summary-judgment motion.

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1 **A. Background¹**

2 Ms. Corter and Mr. Groseclose were previously married and they
3 have two sons from this marriage. Following their divorce, Ms. Corter
4 had primary custody of the two boys. The oldest son suffers from
5 severe autism and requires significant care and attention.

6 On March 30, 2009, Ms. Corter was prescribed sleep medicine to
7 help her rest; she had become sleep deprived caring for the oldest
8 son. On the same day, Ms. Corter's friend called the Chelan County
9 Deputy Sheriff's Office because she was concerned about Ms. Corter's
10 slurred speech and incoherency after speaking with her on the phone.
11 ECF No. 18-1, Ex. A, at 39-41. Later that day, officers conducted a
12 "welfare check" on Ms. Corter and prepared an incident report about
13 their visit:

14 Spoke with Tammy [Corter] along with her father, William
15 Heitzman. Tammy said she was upset, but did not feel like
16 harming herself or anyone else. Tammy just got a
prescription for Triaz. . . .sleeping pills filled at the
Chelan Safeway. On the way home said she took two and felt

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18 ¹ The parties submitted a Joint Statement of Uncontroverted
19 Facts. ECF No. 24. The Court treats these facts as established,
20 Fed. R. Civ. P. 56(d), and sets these forth without citation to
21 the record. Any disputed facts or quotations are supported by a
22 citation. When considering this motion, the Court 1) believed the
23 undisputed facts and Plaintiff's evidence, 2) drew all justifiable
24 inferences therefrom in Plaintiff's favor, 3) did not weigh the
25 evidence or assess credibility, and 4) did not accept assertions
26 made by Plaintiff that were flatly contradicted by the record.
See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986);
Scott v. Harris, 550 U.S. 372, 380 (2007).

1 fine. William said he was the one who took her earlier
2 today to Wenatchee. He said they met with MHP, but they
3 were unable to help as she was not making any threats and
4 did not want voluntary help. William is staying the night
5 with Tammy and the 17 and 8 year old boys. The 17 YO is
6 autistic. One rifle belonging to the ex-boyfriend possibly
7 in the house unk. where. William will alt and call if he
8 finds it so it can be taken for safe keeping.

9 ECF No. 18-1, Ex. D (ellipses in original). The incident report was
10 placed on the law-enforcement database, Spillman.

11 Because Mr. Groseclose works for the County as a detective, he
12 has access to Spillman. His access to Spillman is subject to County
13 policies that restrict is access to work-related reasons and require
14 him to maintain the confidentiality of such information as necessary
15 to perform his investigative duties. Nonetheless, in contravention of
16 County policy, Mr. Groseclose accessed Spillman to obtain the incident
17 report pertaining to Ms. Corter. Mr. Groseclose then used this
18 obtained information, including Ms. Corter's medical information, to
19 support a guardianship petition for his oldest son in 2009.

20 Mr. Groseclose has been disciplined by the County for disclosing
21 investigative information on two prior occasions; neither involved
22 improper access and use of Spillman information. In September 2005,
23 Mr. Groseclose unnecessarily disclosed information about a Child
24 Protective Services complaint to a woman's employer during an attempt
25 to contact the woman. The County responded to the woman's formal
26 complaint and investigated the matter. Mr. Groseclose was directed by
the County to complete counseling for violating the following portion
of his contract:

Employee(s) shall be aware of and shall observe legal
restrictions on the release and dissemination of

1 information. He/She shall disclose such information as
2 required in the proper performance of his/her duties.
3 Employee(s) shall neither disclose nor use for his/her
4 personal interest any confidential information acquired by
5 him/her in the course of his/her official duties.
6 Employee(s) shall treat as confidential matters related to
7 him/her in official confidence regarding investigation,
8 internal affairs and sensitive personnel information.

9 ECF No. 20-1, at 29-30.

10 The second incident occurred in May 2006 when Mr. Groseclose
11 disclosed to a friend that she was likely being investigated for
12 assault. This disclosure violated the County's Standard Operating
13 Procedures Manual:

14 You must keep what you learn at work confidential. You may
15 not attempt to gain personally from anything you learn. Do
16 not allow unauthorized personnel access to criminal
17 records. You may not make any false reports or entries or
18 remove any existing entry to any official document without
19 proper authority. You will frequently learn information
20 which is sensitive or privileged. You are not free, even
21 in the privacy of your home, to share any of the details of
22 ongoing investigations, or confidential information about
23 any aspect of the department. This is a basic condition of
24 employment. Even more than other county agencies, we
25 require you to act professionally, not to gossip or break
26 confidences, and to handle any inter-personal, inter-agency
disputes as professionals.

ECF No. 20-1, Ex. 8. Based on Mr. Groseclose's self-report to the
County of his disclosure to the friend, the County investigated the
matter and gave him a written reprimand, which stated in part: "I
found that complaint [from the 2005 incident] sustained and counseled
you regarding the appropriate dissemination of information. I believe
these incidents are similar enough in nature to warrant your receipt
of this written reprimand" *Id.*

1 The County has not yet disciplined Mr. Groseclose for accessing
2 Spillman to obtain the incident report pertaining to Ms. Corter. ECF
3 No. 20-1, at 33.

4 On March 23, 2012, Ms. Corter filed this § 1983 lawsuit against
5 the County and Mr. Groseclose. In regard to the County, Ms. Corter
6 claims it ratified Mr. Groseclose's actions and failed to train and
7 supervise Mr. Groseclose. ECF No. 20-1, at 15-19. On June 6, 2013,
8 Douglas County filed the instant summary-judgment motion. ECF No. 17.

9 **B. Standard**

10 Summary judgment is appropriate if the "pleadings, the discovery
11 and disclosure materials on file, and any affidavits show that there
12 is no genuine issue as to any material fact and that the moving party
13 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).
14 Once a party has moved for summary judgment, the opposing party must
15 point to specific facts establishing that there is a genuine issue for
16 trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If the
17 nonmoving party fails to make such a showing for any of the elements
18 essential to its case for which it bears the burden of proof, the
19 trial court should grant the summary judgment motion. *Id.* at 322.
20 "When the moving party has carried its burden . . . [showing that it
21 is entitled to judgment as a matter of law], its opponent must do more
22 than show that there is some metaphysical doubt as to material facts."
23 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-
24 87 (1986). "In the language of the Rule [56], the nonmoving party
25 must come forward with 'specific facts showing that there is a genuine
26 issue for trial.'" *Id.* (emphasis in original) (quoting Fed. R. Civ.

P. 56(e)). When considering a motion for summary judgment, the Court does not weigh the evidence or assess credibility; instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

C. Analysis

To support her § 1983 claim against the County, Ms. Corter must show 1) her constitutional right was violated and 2) that the violatory conduct was committed by the County, while acting under color of state law. 42 U.S.C. § 1983; *West v. Atkins*, 487 U.S. 42, 48 (1988). The Court addresses below whether Ms. Corter presented sufficient evidence as to each of these elements to survive summary judgment.

1. Constitutional Right: Informational Privacy

The first § 1983 prong is whether a constitutional right was violated; the right at issue here is Ms. Corter's right to informational privacy. "[T]he right to informational privacy is not absolute; rather, it is a conditional right which may be infringed upon a showing of proper governmental interest." *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004) (quoting *Planned Parenthood of S. Ariz. v. Lawall*, 307 F.3d 783, 790 (9th Cir. 2002)). To determine whether the government's interest in disclosing the information outweighs the individual's privacy interest, the Court balances the following factors:

(1) the type of information requested, (2) the potential for harm in any subsequent non-consensual disclosure, (3) the adequacy of safeguards to prevent unauthorized

1 disclosure, (4) the degree of need for access, and (5)
2 whether there is an express statutory mandate, articulated
3 public policy, or other recognizable public interest
4 militating toward access.

5 *Id.*

6 After balancing the above factors in light of the submitted
7 evidence, the Court finds Ms. Corter establishes triable issues of
8 fact as to whether her conditional constitutional right to privacy was
9 violated. First, Mr. Groseclose discovered sensitive medical
10 information pertaining to Ms. Corter. Second, because of the
11 disclosure of this sensitive medical information during the
12 guardianship proceedings, Ms. Corter was at risk of losing custody of
13 her oldest son. Third, the County recognizes the need to restrict law
14 enforcement's use of investigative information to only law-enforcement
15 purposes and has established policies to that effect; however, there
16 are few safeguards to prevent the disclosure of such information by a
17 law enforcement officer for personal use. Fourth, there was no
18 legitimate law enforcement purpose for Mr. Groseclose to access the
19 incident report pertaining to Ms. Corter. Finally, the County has not
20 articulated a public need for Mr. Groseclose's access to, and
21 disclosure of, the incident report related to Ms. Corter.
22 Accordingly, after considering these factors, the Court determines Ms.
23 Corter submitted sufficient evidence to establish triable issues of
24 fact relating to whether her conditional constitutional right to
25 privacy was violated. Douglas County's motion is denied in this
26 regard.

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1 2. Under Color of State Law

2 The second § 1983 prong is whether the unconstitutional conduct
3 was committed by a person acting under color of state law. There is
4 no dispute that the County, as a municipality, is a person under §
5 1983 and may be liable for a constitutional violation. See *Monell v.*
6 *Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978).
7 However, it is disputed whether the County "acted" under color of
8 state law.

9 A municipality cannot be liable based on respondeat superior;
10 instead to prove a municipality "acted" under color of state law, a
11 plaintiff must show that a "policy or custom" of the municipality
12 caused the injury. *Id.* at 689-91. There are three ways to show a
13 "policy or custom": 1) a "promulgated, adopted, or ratified" policy of
14 a municipality, *Thompson v. City of L.A.*, 885 F.2d 1439, 1443 (9th
15 Cir. 1989), *overruled on other grounds by Bull v. City & Cnty. of San*
16 *Francisco*, 595 F.3d 964 (9th Cir. 2010); 2) a permanent and well-
17 settled practice amounting to a municipal custom, *City of St. Louis v.*
18 *Praprotnik*, 485 U.S. 112, 127 (1988); or 3) a failure to train
19 municipal employees adequately, *City of Canton, Ohio v. Harris*, 489
20 U.S. 378, 388-91 (1989). At issue here is whether the County ratified
21 Mr. Groseclose's conduct or failed to train or supervise Mr.
22 Groseclose as to the proper handling of law-enforcement information.

23 a. *Ratification*

24 Ms. Corter claims the County is liable because it ratified Mr.
25 Groseclose's conduct. If a final policymaker approves the decision of
26 a subordinate and its basis, then the municipality is liable because

1 it ratified the conduct. *Prapotnik*, 485 U.S. at 127. A municipal
2 policy must be an affirmative, conscious, or deliberate choice. See,
3 e.g., *Fuller v. City of Oakland*, 47 F.3d 1522, 1535 (9th Cir. 1995)
4 (finding ratification because police chief approved a report
5 concluding that alleged sexual harassment incidents did not occur);
6 *Hammond v. Cnty. of Madera*, 859 F.2d 797, 802 (9th Cir. 1988) (finding
7 ratification because county board accepted and approved illegal deeds
8 leading to deprivation of property rights), *overruled on other grounds*
9 *by Wood v. Ostrander*, 851 F.2d 1212 (9th Cir. 1988).

10 Ms. Corter argues that the County's minimal punishment of Mr.
11 Groseclose's two prior violations and failure thus far to reprimand
12 him for improperly accessing Spillman and using the obtained
13 information for personal gain evidences the County's ratification of
14 his Spillman wrongdoing. That the County has not yet disciplined Mr.
15 Groseclose for his improper Spillman access does not equate to
16 ratification by the County. See, e.g., *Gillette v. Delmore*, 979 F.2d
17 1342, 1348 (9th Cir. 1992) ("It does not alter our conclusion that
18 City Manager Gleason's inaction in Gillette's case does not amount to
19 "ratification" under . . . *Praprotnik*"). There is no evidence of an
20 affirmative, conscious, or deliberate choice by the County to ratify
21 Mr. Groseclose's improper access of Spillman for personal gain.
22 Accordingly, the County's motion is granted in this regard.

23 b. *Failure to Train and Supervise*

24 Ms. Corter claims the County is liable because it has a custom
25 or policy of failing to train and supervise its employees in regard to
26 proper access and use of investigative information. A municipality is

1 liable for its employee's constitutional violations under the failure-
2 to-train-and-supervise theory of liability if: 1) "the county has
3 customs or policies that amount to deliberate indifference," and 2)
4 "these customs or policies were the moving force behind the employee's
5 violation of constitutional rights." *Long v. City of L.A.*, 442 F.3d
6 1178, 1186 (9th Cir. 2006) (citing *Gibson v. Cnty. of Washoe*, 290 F.3d
7 1175, 1193-93 (9th Cir. 2002)).

8 Ms. Corter argues a jury should assess whether Douglas County
9 was deliberately indifferent by inadequately training/supervising its
10 employees as to the use of confidential information. A municipality's
11 inadequate training amounts to deliberate indifference when: 1)
12 policymakers continue to adhere to a training/supervision program they
13 know or should know has failed to prevent tortious conduct by
14 employees; 2) there is a pattern of tortious conduct by employees; or
15 3) a constitutional violation is highly predictable based on the
16 failure to give employees "tools to handle recurring situations."
17 *Long*, 442 F.3d at 1186.

18 The Court recognizes that whether a local government has
19 "displayed a policy of deliberate indifference to the constitutional
20 rights of its citizens is generally a jury question." *Gibson*, 290
21 F.3d at 1194-95 (citing *Oviatt By and Through Waugh v. Pearce*, 954
22 F.2d 1470, 1478 (9th Cir. 1992)). However, after considering the
23 evidence in the light most favorable to Ms. Corter, the Court
24 determines it must grant the County summary judgment.

25 The evidence establishes that Mr. Groseclose violated the
26 County's policies regarding the proper disclosure of investigative

1 information on two prior occasions. However, there is no evidence
2 that other County employees have committed similar violations.
3 Accordingly, there is no evidence to establish a triable issue of fact
4 as to whether the County continued to adhere to an information-
5 disclosure training/supervision program that it knew or should have
6 known failed to prevent tortious disclosures by its employees. It is
7 undisputed that the County had policies regarding the proper access to
8 and disclosure of investigative information, and that Mr. Groseclose
9 received these policies when he was employed and reminded of such
10 after his two previous improper disclosures. The County investigated
11 and disciplined Mr. Groseclose for his two prior improper disclosures.
12 For his first improper disclosure of information, the County provided
13 Mr. Groseclose with counseling; for his second improper disclosure of
14 information, the County placed a written reprimand in his file. On
15 both occasions, Mr. Groseclose was reminded of the particular County
16 policy that he violated. Although each of these two prior incidents
17 involved Mr. Groseclose improperly disclosing investigative
18 information, the circumstances of each were different from each other,
19 as well as different from his improper access to and disclosure of
20 information pertaining to Ms. Corter's incident report. The County
21 took appropriate graduated steps to address Mr. Groseclose's improper
22 disclosures: disclosures that, under this record, are isolated to Mr.
23 Groseclose and do not extend to other County employees. At the time
24 of Mr. Groseclose's improper Spillman access and then subsequent use
25 of that information in the guardianship procedure, Mr. Groseclose's
26 conduct was not indicative of a deliberately-indifferent

1 training/supervision program by the County, but rather "rogue conduct"
2 by a County detective. There is no evidence of adherence to a
3 training/supervision program that the County knew failed to prevent
4 tortious conduct by its employees, or of a pattern of tortious conduct
5 by untrained County employees. The County provided Mr. Groseclose
6 with the tools to properly access and disseminate investigative
7 information. Mr. Groseclose's instant conduct was not highly
8 predictable by the County.

9 Because the Court finds Ms. Corter presented insufficient
10 evidence to support a triable issue of fact as to whether the County
11 failed to properly train or supervise Mr. Groseclose, the Court need
12 not address whether its training policy was the moving force that
13 caused Ms. Corter's injury. Summary judgment granted in Douglas
14 County's favor.

15 **D. Conclusion**

16 For the above-given reasons, **IT IS HEREBY ORDERED:**

17 1. Douglas County's Motion for Summary Judgment, **ECF No. 17**,
18 is **GRANTED**.

19 2. **Judgment** is to be entered in Douglas County's favor with
20 prejudice.

21 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
22 Order and provide copies to all counsel.

23 **DATED** this 20th day of September 2013.

24 s/ Edward F. Shea

25 EDWARD F. SHEA

26 Senior United States District Judge